IN THE MATTER OF LICENSE NO. 314509
AND ALL OTHER SEAMAN'S DOCUMENTS Z-318 200
Issued to: John J. NEARY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1738

John J. NEARY Z-318 200

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 29 March 1968, an Examiner of the United States Coast Guard at Providence, R. I., suspended Appellant's seaman's documents for one month on six months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as pilot on board SS TEXACO MASSACHUSETTS under authority of the license above captioned on or about 13 February 1968, Appellant failed to determine the position of the vessel, thereby contributing to a grounding.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of several witnesses and reports filed in connection with the grounding of the ship.

In defense, Appellant offered in evidence his own testimony and that of an expert witness.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of one month on six months' probation.

The entire decision was served on 2 April 1968. Appeal was timely filed on 25 April 1968, and perfected on 8 July 1968.

FINDINGS OF FACT

On 18 February 1968, Appellant was serving as pilot of SS TEXACO MASSACHUSETTS and acting under authority of his license.

On the morning of 13 February 1968, Appellant piloted TEXACO MASSACHUSETTS easterly through TIVERTON CHANNEL, Rhode Island, and brought the vessel to a mooring at the Texaco docks on the east side of the Sakonnet River (C&G.S. chart 353).

At 1430 that date, the ship, on a southerly heading, and with Appellant again acting as pilot, unmoored from the wharf, and was turned in the Sakonnet River with the assistance of two tugs, to retrace its way to and through TIVERTON CHANNEL, back to Narragansett Bay and thence to Providence, R. I.

After the vessel had been turned around, it proceeded northerly in conformance to the channel until the ship had Buoy 15 abeam to port, when Appellant ordered the commencement of a course change to the left to take the ship into TIVERTON CHANNEL. The course change was one of more than 90°, since the channel to be entered had an axis of 264°t on a westerly heading.

When the ship reached a heading of 275°t, eleven degrees to the right of "channel heading" the vessel grounded. The points of grounding were determined to be precisely at the stem and at the port side of the forecastle. There was good water at all other points.

The draft of the vessel was 31 feet 10 inches, forward and aft.

The depths found at the points of grounding were twenty nine feet. No other depth found around the ship was less than thirty two feet. Project depth of the channel is thirty five feet for a width of 400 feet.

The position of grounding was ascertained by a three bearing fix to be the charted point of Buoy "4". The buoy was observed to be about 150 feet from the vessel and forward of the port beam. The buoy was in fact off station by the amount of its distance from the ship.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. In view of the disposition of this case, no detailed statement of grounds will be given here.

APPEARANCE: Glynn & Dempsey, Boston, Mass., by Leo F. Glynn, Esq.

OPINION

I

One of the theories proffered in this case in support of the allegation that Appellant was negligent in the grounding of TEXACO MASSACHUSETTS is that he did not utilize a "danger bearing" on one of the towers of the Mount Hope bridge so as to avoid making a premature turn. When it was argued that such a bearing could not be taken from a swinging ship, the theory was refined to say that the bearing should have been taken before the turn was commenced.

When it is considered first that the bridge towers referred to were abaft the port beam of the ship and two miles distant, and the maneuver in question was the turning of a ship 600 feet long more than 90° left into a channel 400 feet wide, the inapplicability of the theory appears evident. Further, it affirmatively appears in the record that, regardless of the position of Bouy 4, the turn was commenced without respect to the position of the buoy but was commenced in accordance with the customary practice of piloting in the area when the ship had Bouy 15 abeam to port. This buoy was not out of position, so that the commencement of the turn was not premature, and the possible relevancy of a "danger bearing" disappeared once the turn was begun.

II

It was argued also that Appellant should have noted that Buoy 4 was out of position because as the ship proceeded up the Sakonnet River it necessarily crossed a range formed by Buoys 15, 3, and 4, and that observation of this range as the ship crossed it would have shown the middle buoy to be out of position.

To this Appellant replied that since Bouy 3 was displaced along the line of the range, and not laterally from the range, the displacement would not have been observable. The record of observations made from the ship does not support this. After the vessel grounded at the point where Buoy 4 should have been, the Buoy was observed to be forward of the port beam and about 150 feet from the ship, which was on a heading of 275°t. This means that the buoy was displaced laterally from the range not along the range line.

The important thing here, however, is that buoys are not used to form ranges and in such close quarters as existed here it cannot be called negligence for a pilot to have failed so to utilize them while attending to the beginning of a change of course of more than 90°.

III

One other element in this case is not without significance. Appellant, just a few hours before the grounding, had brought this same ship in past this same buoy and had found nothing amiss. Nothing had happened in the interim to cause him or anyone else to suspect that the buoy was off station.

IV

But there is one fact that overrides all other considerations and relegates the questions of "danger bearings" and "ranges" to the realm of the academic.

While it is true that in the ordinary case of grounding it is enough to establish the fact of grounding to pass the burden of proceeding to the person charged, in this case the place of grounding and the aspect of the ship in the channel were established.

There is evidence that the bridge of TEXACO MASSACHUSETTS, from which bearings were taken after it had grounded to establish a fix precisely at the point where the buoy should have been, was approximately at the midpoint of its length. Although the bearings which produced the fix were taken from both wings of the bridge, the ship's beam may be disregarded as a factor to be considered since the three lines of bearing met in a point. It may be taken that the midpoint of the ship was at the point marked on the chart as the location of the buoy.

Since it is not disputed that the ship was on a heading of 275°t when it grounded, the stem of the ship was thus about 57 feet to the right of the left hand (southerly) side of the channel, and the entire forebody of the ship for a distance of about 100 feet was in the channel. But it is precisely in this portion of the ship, at the stem and at the port side of the forecastle, that the vessel was "hung up." In simpler words, the vessel grounded inside the marked channel, and no part of the vessel which can be shown to have been outside the channel was proved to be aground.

This leaves open the possibility that this dredged channel, at the time of this grounding, had silted, so as to ground even a vessel which was already on a heading of 264°t and which was leaving Buoy 4 to its left.

There is no evidence as to any survey of depths either before or after the grounding. If there were evidence that project depth existed shortly before or shortly after the grounding the accuracy of the fix after grounding could be attacked. But here, the accuracy of the fix is not only accepted by the Investigating Officer but is propounded by him, and the accuracy is accepted by

the Examiner.

To prove that a vessel runs aground may pass the burden of proceeding to a person charged under R. S. 4450 to explain the grounding. To prove that a vessel grounded in a place where it had a right to be, according to reliable charts, is to prove too much.

V

With this view of the facts, as has been said, it becomes academic whether Appellant should have known that a buoy was out of position. It is also academic whether a series of bearings taken upon a bridge structure two miles away abaft port beam would have constituted the recommended "danger bearings" technique, when the vessel was to make a course change of more than 90° to the left into a marked channel.

The grounding was proved; but the same evidence that proved the grounding also proved no more than that it happened at a point where the vessel had a right to be.

This is not proof of negligence.

CONCLUSION

It is concluded that the evidence is insufficient to prove other than that the portion of TEXACO MASSACHUSETTS when it was found to be aground was within a channel the project depth of which was sufficient to take a vessel of the draft then existing. There was no evidence to indicate that the channel, at the point of grounding, was of less that project depth, or that, if it was, Appellant had reasonable notice of a shoaling.

ORDER

The order of the Examiner dated at Providence, R. I. on 29 March 1968, is VACATED. The findings of fact of the Examiner are not disturbed, but the charges are DISMISSED.

P. E. TRIMBLE
Vice Admiral, U.S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 15th day of November 1968.

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